

**Contract between the City of Boston and
BW Garage Owner Limited Partnership**

**Pursuant to Section 6A of Chapter 121A of the
Massachusetts General Laws**

This Agreement (“**Agreement**”) made this 3rd day of JANUARY, 2014, under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of the Commonwealth of Massachusetts is by and between BW GARAGE OWNER LIMITED PARTNERSHIP, a Massachusetts limited partnership, (hereinafter referred to as the “**Partnership**”) and the CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts (hereinafter referred to as the “**City**”).

WITNESSETH THAT:

WHEREAS, an application was filed with the Boston Redevelopment Authority (the “**Authority**”) dated February 4, 2013 (the “**Original Application**”) under the provisions of said Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, as amended (collectively, “**Chapter 121A**”) for approval of a project in the “Project Area” (as described in Exhibit A-1) commonly known as 1325 Boylston Street, Boston, Massachusetts (the “**Original Project**”); and

WHEREAS, the Authority’s approval of the Original Project was set forth in that certain “Report and Decision On The Application Of BW Office Owner Limited Partnership, BW Anchor Retail Owner Limited Partnership And BW Residential-Retail Owner Limited Partnership For Authorization and Approval Of A Project Under Chapter 121A of the General Laws And Acts Of 1960, Chapter 652, Both As Amended, Known As The Boylston West Chapter 121A Project”, which the Authority voted to adopt on February 14, 2013 and which was approved by the Mayor of the City on February 18, 2013 and filed with the Clerk of the City of Boston on March 5, 2013 (“**Original Report and Decision**”).

WHEREAS, the Partnership filed an amendment (the “**Amendment**”) to the Original Application with the Authority dated August 13, 2013 to make certain modifications to the Original Project, including, without limitation, the designation of the Partnership as a 121A entity (the Original Application, as modified by the Amendment, the “**Application**”); and

WHEREAS, the Authority approved the Amendment and consented to the designation of the Partnership as a 121A entity by vote on August 15, 2013, adopting an amendment to the Original Report and Decision (as amended, the “**Report and Decision**”); and

WHEREAS, the Mayor of the City approved the Authority’s Report and Decision on August 16, 2013; and

WHEREAS, the vote of the Authority, the Report and Decision, and the approval of the Mayor of the City were filed with the office of the City Clerk on August 20, 2013 (the “**Approval Date**”), and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, pursuant to the provisions of Chapter 121A, the City and the Partnership have determined to enter into this Agreement with respect to the garage portion of the Project Area, as more particularly described on Exhibit A-2 attached hereto (the "Garage Unit" or the "Project").

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Partnership hereby agrees with the City that all activities of the Partnership will be undertaken in accordance with: (a) the Application, (b) the applicable provisions of Chapter 121A as now in effect, (c) the minimum Standards for the Financing, Construction, Maintenance and Management of the Project set forth in the Application, and (d) the terms and conditions set forth in the Report and Decision of the Authority approving the Project consenting to the designation of the Partnership as a 121A entity and authorizing the Partnership to undertake the Project (collectively, the "Approval"), which are incorporated herein by reference. Such activities of the Partnership will include, without limitation, the construction, maintenance and operation of the Project in accordance with the Application.

2. (a) Subject to the provisions and limitations of this Agreement, the Partnership will pay to the Commonwealth of Massachusetts Department of Revenue or any successor department or agency ("**DOR**"), for each calendar year during which the Partnership is subject to Chapter 121A and has the benefit of the tax exemption provided thereunder, the urban redevelopment excise required under Section 10 of Chapter 121A (the "**Excise Tax**").

(b) Subject to the provisions and limitations of this Agreement, the Partnership will pay to the City with respect to each calendar year or portion thereof thereafter during which the Partnership is subject to Chapter 121A and has the benefit of the real estate tax exemption provided thereunder, an amount (the "**Differential Amount**") equal to (i) the amounts set forth on Exhibit B hereto (the "**Contract Amount**"), less (ii) the Excise Tax paid.

In the event of any change, modification or improvement of the Project requiring the consent of the Authority under the Regulatory Agreement between the Partnership and the Authority of even date herewith (the "Regulatory Agreement"), the City and the Partnership shall work together in good faith to determine whether the Contract Amounts set forth on Exhibit B should be adjusted.

- (c) All payments to the City shall be made on or before the April 1 following the end of the calendar year relating to such payment. Payment of amounts due hereunder shall be equitably pro rated for any partial year during the periods set forth in this Agreement. Late payments will bear interest at the rate equal to the rate charged for delinquent real estate accounts by the City's Collector-Treasurer pursuant to M.G.L. c. 60. The City shall have all rights and remedies available to it for the collection of the Differential Amount in the event the Partnership breaches its duty to pay.

3. The Partnership shall file with the Commissioner of Assessing and the Authority by February 10 following the end of each calendar year during which this Agreement is in effect the following: (a) a computation for such calendar year under the applicable formula set forth in Section 2 above; (b) a certification of the Garage Gross Revenue (as defined in Exhibit B) ; and (c) a statement of the Gross Income of the Partnership. Further, the Partnership will cause to be filed with the Assessing Department within one hundred twenty (120) days of the end of each calendar year during which this Contract is in effect a statement of profit and loss, a balance sheet and a statement of receipts and disbursements for the preceding calendar year.
4. The Partnership shall allow the Commissioner of Assessing, or a representative of the Commissioner designated in writing, to examine all Excise Tax Returns and all attachments thereto filed by the Partnership with the DOR. In addition, the Partnership shall provide to the City a copy of any filing made to the DOR within 30 days of such filing. For all payments made to the DOR, the Partnership will provide a detailed breakdown indicating what portions of the payment, if any, were for penalties or interest
5. Any overpayment (“Overpayment”) shall, at the election of the City, be refunded to the Partnership or applied to reduce the Contract Amount due in the succeeding calendar year or calendar years until such Overpayment has been exhausted. The Partnership shall give notice to the City of the discovery of the alleged Overpayment (the “**Overpayment Notice**”) not later than the December 31 following the April 1 payment date said Overpayment relates to. The notice shall be accompanied by supporting documentation, including but not limited to, ward and parcel number, the date payment was made to the DOR and/or to the City, the amount of the Contract Amount and the Excise Tax paid, and copies of both sides of all relevant cancelled checks.

Notwithstanding the foregoing, the City shall not be obligated to refund any Overpayment and/or grant any credit for interest, late fees, penalties or fines that may have been assessed if such Overpayment was due to either the Partnership’s failure to provide the financial information required by this Agreement not later than the date of the Overpayment Notice or to the Partnership’s intentional provision of misleading financial information.

The Partnership shall provide the City with a detailed breakdown of what payments were sent to the Commonwealth of Massachusetts, including the ward and parcel number to which those payments were applied.

The Fiscal Year 2014 assessment shall not be the basis of a claim of Overpayment.

6. The Assessing Department hereby determines, in accordance with the seventh paragraph of Section 10 of Chapter 121A, that the fair cash value of the real and personal property constituting the Project, as of January 1, 2015, and for each succeeding-January 1 until

and including the year next following the year in which the Partnership's property tax exemption under Chapter 121A shall terminate, shall be an amount which, when used in the computation of the Excise Tax for or with respect to the previous calendar year, would not result in an Excise Tax greater than the Contract Amount due for such prior year. The Assessing Department agrees to certify to DOR, pursuant to the second paragraph of Section 10 of Chapter 121A, on or before March 1 of each year a fair cash value calculated in accordance with the preceding sentence.

7. The obligations of the Partnership under this Agreement and the Approval are conditioned in all respects upon the Project being exempt from real estate taxation under Section 10 of Chapter 121A. If the condition in the foregoing clause is not met at any time during the term of the Partnership's designation under Chapter 121A pursuant to the Approval, then the Partnership shall have the right to seek the termination of the designation of the Project and the Partnership as set forth in the Application.
8. This Agreement shall continue for a term commencing on July 1, 2014, the "**Effective Date**," and terminating on the date on which the property tax exemption provided to the Partnership under Chapter 121A terminates. Notwithstanding the foregoing, upon the termination of this Agreement as to the Project, the Partnership shall pay, or cause to be paid, to the City, a pro forma tax to cover the time period between such termination of this Agreement and the period under which the Project becomes taxable pursuant to Chapter 59 of the General Laws, which pro forma tax shall be equal to the Contract Amount for such period if the Project or portion thereof had remained subject to this Agreement. Such amount for the balance of the calendar year during which this Agreement terminates shall be payable within six (6) months following the month in which this Agreement expires or terminates. In addition, if the Agreement terminates in July through December of any given year then such amount for the first six months of the year following the year in which this Agreement terminates shall be payable on or before June 30 of the year following the year in which this Agreement expires or terminates. Neither the Project nor the Partnership shall thereafter be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this Agreement as provided in Chapter 121A (provided, however, the deviations and permissions granted by the Authority set forth in the Application shall survive and remain in effect with respect to the Project).
9. Notwithstanding any language to the contrary in the Application or any other document entered into between the Authority and the Partnership, no amendment or modification of the terms and conditions of this 6A Agreement shall be binding on the City or the Partnership without the prior written consent of the City and the Partnership. The Partnership and the City further agree that, without mutual consent, any amendment subsequent to the delivery of this Agreement of any of the provisions of Chapter 121A of the General Laws or of Chapter 652 of the Acts of 1960 or of the Rules, Regulations and Standards now applicable to the Project shall not affect this Agreement.
10. All notices required pursuant to this Agreement shall be addressed as follows:

If to the City: City of Boston Assessing Department
One City Hall Square, Room 301
Boston, MA 02201
Attn: Commissioner

If to the Partnership: BW Garage Owner Limited Partnership
c/o Samuels & Associates
333 Newbury Street
Boston, MA 02115
Attn: Thomas P. Bloch

With a copy to: Goulston & Storrs, P.C.
400 Atlantic Avenue
Boston, MA 02110
Attn: William H. Dillon, Esq.

Each party may designate a different address provided that notice of said change is first given to the other party. Any such notice shall be deemed given as of the date such notice is (i) delivered to the party intended, (ii) delivered to the then designated address of the party intended, (iii) rejected at the then designated address of the party intended, provided such notice was sent prepaid, or (iv) sent by nationally recognized overnight courier or by United States Certified Mail, return receipt requested, postage prepaid and addressed to the then designated address of the party intended.

11. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. In the case of the Partnership no successor shall benefit from the provisions of this 6A Agreement unless it has been approved by the Authority to the extent required. Each and every obligation and condition contained in this Agreement, in the Report and Decision, in the Application, or in any agreement or undertaking relating to the Report and Decision or the Application shall be construed to apply only to the Project. The liability of the undersigned shall be limited solely to its interest in the Project, and no partner, member, venturer, trustee, beneficiary, shareholder, officer, director, employee, agent, or the like of the Partnership or their respective affiliates, successors or assigns (including, without limitation, mortgagees), or any person or entity directly or indirectly holding any interests in any of the foregoing from time to time, shall have or be subject to any personal liability hereunder or under any agreement or undertaking related hereto or required hereby. After any termination under Chapter 121A as to the Project, or authorized transfer of the Project and/or the Project Area to another party, or termination or transfer of any portion thereof, each in accordance with the Approval by the Authority, the Partnership shall no longer be subject to the obligations hereof and shall have no further liability hereunder with respect to the Project, the Project Area or such portion of the Project Area, as the case may be, the City agreeing to look solely to any such transferee.
12. As of the Approval Date, the Project Area comprises the following parcels (the "Parcels"), all as more fully described in the Application: (i) the Garage Unit; and (ii) the Office Unit. This Agreement affects only the Garage Unit.


13. The Term of this Agreement shall commence on July 1, 2014 and expire on December 31, 2036, subject to any rights of the Partnership to seek earlier termination of the status of the Project as a 121A project as provided by law. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, provided that the substantive economic terms of this Agreement are not materially altered.
14. For purposes of this Agreement, an Overpayment by the Partnership with respect to any calendar year shall include amounts paid by the Partnership to the Commonwealth of Massachusetts with respect to the Project pursuant to Sections 10 and 15 of Chapter 121A which, together with the Differential Amount, exceed for such calendar year the Contract Amount, and any real estate taxes under General Laws Chapter 59, as amended or any successor statute, paid by the Partnership to the City with respect to the Project for any period during which this Agreement is in effect.
15. In order to facilitate potential separate ownership and financing of the Parcels, the owner of the Garage Unit shall be liable only for those obligations hereunder that relate to the Garage Unit and the owner of the Office Unit shall be liable only for those obligations under that certain 6A Contract with respect to the Office Unit of even date herewith (the "Office 6A Contract") that relate to the Office Unit. Notwithstanding anything contained herein to the contrary, any non-compliance by the Office Unit or the owner of the Office Unit with the provisions of the Office 6A Contract herewith shall not affect the compliance of the Garage Unit or the owner of the Garage Unit and any non-compliance by the Garage Unit or the owner of the Garage Unit with the provisions of this Agreement shall not affect the compliance of the Office Unit or the owner of the Office Unit.


[BALANCE OF PAGE INTENTIONALLY BLANK]

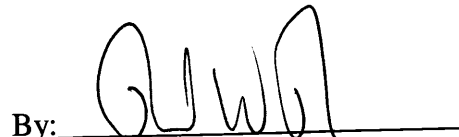
EXECUTED as a sealed instrument the day and year first above written.

APPROVED AS TO FORM:

CITY OF BOSTON


Corporation Counsel *CWC*

By: 
Mayor

By: 
Commissioner of Assessing

BW GARAGE OWNER LIMITED PARTNERSHIP, a Massachusetts limited partnership

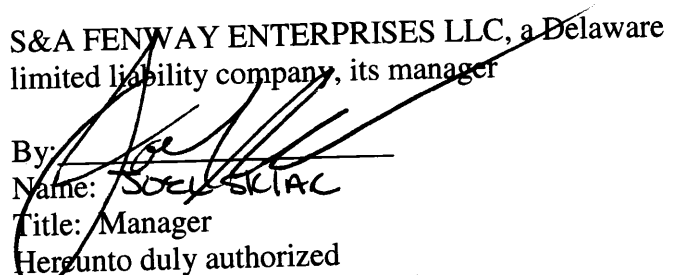
By: BW GARAGE GP LLC, a Massachusetts limited liability company, its general partner

By: BOYLSTON WEST GARAGE LLC, a Delaware limited liability company, its manager

By: BOYLSTON WEST GARAGE HOLDINGS LLC, a Delaware limited liability company, its manager

By: FENWAY ENTERPRISES BOYLSTON WEST LLC, a Delaware limited liability company, its managing member

By: S&A FENWAY ENTERPRISES LLC, a Delaware limited liability company, its manager

By: 
Name: *SOEL SKIAC*
Title: Manager
Hereunto duly authorized

Limited Joinder

The undersigned Boylston West Garage LLC, a Delaware limited liability company joins in the foregoing Contract solely for the purpose of agreeing to submit to the Partnership any information necessary for the Partnership to provide the Commissioner of Assessing with the information required by Section 3 of the foregoing Contract, as and when required by said Section 3. By the execution of this Contract, the City acknowledges and agrees that neither such joinder, nor the performance of the undertaking made herein, shall subject Boylston West Garage LLC to the provisions of Chapter 121A, including, without limitation, the Regulatory Agreement, and that only the Partnership is an entity subject to said Chapter 121A with respect to the Project.

BOYLSTON WEST GARAGE LLC, a Delaware limited liability company

By: BOYLSTON WEST GARAGE HOLDINGS LLC, a Delaware limited liability company, its manager

By: FENWAY ENTERPRISES BOYLSTON WEST LLC, a Delaware limited liability company, its managing member

By: S&A FENWAY ENTERPRISES LLC, a Delaware limited liability company, its manager

By: 

Name: JOEL SKLAR

Title: Manager

Hereunto duly authorized

EXHIBIT A-1

Project Area

Those certain parcels in Boston, Massachusetts, shown as “Garage Unit” and “Office Unit” on a certain plan entitled “Boylston Street, Vertical Subdivision Plan of Land” by DGT Survey Group, dated January 17, 2013, recorded with the Suffolk County Registry of Deeds as Plan 55 of 2013.

EXHIBIT A-2

Garage Unit

That certain parcel in Boston, Massachusetts, shown as "Garage Unit" on a certain plan entitled "Boylston Street, Vertical Subdivision Plan of Land" by DGT Survey Group, dated January 17, 2013, recorded with the Suffolk County Registry of Deeds as Plan 55 of 2013

EXHIBIT B

CONTRACT AMOUNTS

	Calendar Year	Amount (Garage Unit Only)
1	2014	\$50,000
2	2015	\$50,000
3	2016	\$50,000
4	2017	An amount equal to one percent (1%) of Garage Gross Revenue
5	2018	An amount equal to one percent (1%) of Garage Gross Revenue
6	2019	An amount equal to one percent (1%) of Garage Gross Revenue
7	2020	An amount equal to one percent (1%) of Garage Gross Revenue
8	2021	An amount equal to one and 5/10 percent (1.5%) of Garage Gross Revenue
9	2022	An amount equal to two percent (2%) of Garage Gross Revenue
10	2023	An amount equal to three percent (3%) of Garage Gross Revenue
11	2024	An amount equal to three and 5/10 percent (3.5%) of Garage Gross Revenue
12	2025	An amount equal to four percent (4%) of Garage Gross Revenue
13	2026	An amount equal to four and 5/10 percent (4.5%) of Garage Gross Revenue
14	2027	An amount equal to five percent (5%) of Garage Gross Revenue
15	2028	An amount equal to 5 and 5/10 percent (5.5%) of Garage Gross Revenue
16	2029	An amount equal to six percent (6%) of Garage Gross Revenue
17	2030	An amount equal to six percent (6%) of Garage Gross Revenue
18	2031	An amount equal to six percent (6%) of Garage Gross Revenue
19	2032	An amount equal to six and 5/10 percent (6.5%) of Garage Gross Revenue
20	2033	An amount equal to six and 5/10 percent (6.5%) of Garage Gross Revenue
21	2034	An amount equal to seven percent (7%) of Garage Gross Revenue
22	2035	An amount equal to seven percent (7%) of Garage Gross Revenue
23	2036	An amount equal to seven and 5/10 percent (7.5%) of Garage Gross Revenue

“Garage Gross Revenue” means, for any period of reference, the gross revenues derived from parking and any other operations in the Garage Unit, as determined on an accrual basis of accounting, including, without limitation, revenue from monthly parking by residents of the Residential Unit (as defined in the Application), monthly parking by tenants in the Office Unit, daily parking by visitors to the Anchor Retail Unit (as defined in the Application) and Junior Retail Unit (as defined in the Application), daily or monthly public parking, valet charges, charges for cleaning/detailing, vending revenue, late payment fees, and any other revenue

derived from operation of the Garage Unit, whether collected directly by the Partnership, its tenants, subtenants, sub-subtenants, an operator or any licensee.

With respect to parking for customers or visitors of the retail units, Garage Gross Revenue shall include amounts paid by customers/visitors and amounts paid by retail tenants or owners of any Unit to subsidize the amounts paid by customers/visitors, but shall not include: (i) sales or use taxes required to be remitted to any governmental agency, or (ii) the value (i.e., reduction from standard rates) of any discounted parking arrangement granted with respect to parking for retail customers or visitors. For example, if a visitor to the Anchor Retail Unit parks for a period of time for which the Garage Unit's standard public parking fee is \$25, and such visitor actually pays a parking fee of \$10 based on ticket "validation" by the owner or tenant of the Anchor Retail Unit, and such owner or tenant also pays the operator of the Garage Unit a separate fee or charge of \$5 on account of such "validated" ticket, the total of such actual payments (\$15) will be included in Garage Gross Revenue. If an owner or tenant of the Anchor Retail Unit or Junior Retail Unit pays any other fee, charge or payment on account of or in consideration for free or discounted or validated parking for its customers or visitors (e.g., a flat monthly charge in addition to or in lieu of payments on account of individual "validated" tickets), whether such fee or charge is identified as a parking charge or as rent or in any other manner, then such fee or charge shall be included in Garage Gross Revenue.

With respect to parking other than for retail customers and visitors, if stated parking fees charged to tenants in the Office Unit or residents in the Residential Unit, or to tenants in the Anchor Retail Unit or the Junior Retail Unit for parking for their own use (i.e. employee parking) as opposed to the use of their customers and visitors, are below fair market parking rates, for purposes of determining Garage Gross Revenue such tenants and residents shall be deemed to be paying fair market parking rates (i.e., Garage Gross Revenue shall be calculated using fair market parking rates for such tenants and residents rather than the lower stated parking fees). In no event shall Garage Gross Revenues be deemed to include any payments by any owner or occupant of the Project not derived from or based on parking or other operations in the Garage Unit.

During any calendar year, subsequent to calendar year 2016, that less than \$16,000,000 in I-Cubed bonds and bond anticipation notes have been issued for the project by the State, as of the December 31 ending that calendar year, the foregoing amount, related to said calendar year, shall be multiplied by an adjustment factor, the numerator of which is the actual I-Cubed bonds and bond anticipation notes issued and the denominator of which is \$16,000,000.